

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**



# 74-1796

*To be argued by*  
JEFFREY I. GLEKEL

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## United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-1796

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UNITED STATES OF AMERICA,

*Appellee,*

—v.—

GEORGE THOMAS,

*Defendant-Appellant.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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### BRIEF FOR THE UNITED STATES OF AMERICA

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PAUL J. CURRAN,  
*United States Attorney for the  
Southern District of New York,  
Attorney for the United States  
of America.*

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**BRIEF FOR THE UNITED STATES OF AMERICA**

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**Preliminary Statement**

George Thomas appeals from a judgment of conviction entered in the United States District Court for the Southern District of New York on March 12, 1974, after a one day bench trial before the Honorable Frederick vP. Bryan, United States District Judge.

Indictment 73 Cr. 1088, filed December 3, 1973, charged George Thomas in two counts with forging and uttering a United States Treasury check payable to Rosario Bucci for \$98.60, in violation of Title 18, United States Code, Section 495.

Trial before Judge Bryan, sitting without a jury, commenced on March 12, 1974 and concluded the same day when Judge Bryan convicted Thomas on both counts.

On April 30, 1974, Judge Bryan sentenced Thomas on Count One to imprisonment for one year with execution suspended and probation for two years; imposition of sentence on Count Two was suspended.

### **Statement of Facts**

#### **A. The Government's Case**

On April 10, 1972 George Thomas entered a branch of Peoples Bank for Savings of New Rochelle and cashed a United States Treasury check payable to Rosario Bucci in the amount of \$98.60 and dated April 3, 1972 (Tr. 7-9; 14-18).<sup>\*</sup> When Thomas was later questioned by a Secret Service Agent, Thomas stated that he had received the check in a crap game from an individual whom he was unable to identify or describe. He admitted cashing the check and endorsing it with his own name but denied writing the signature of the payee on the back of the check. Thomas claimed that the check had already been endorsed in the name of the payee, Rosario Bucci, when he received it (Tr. 30-32). However, a handwriting expert testified that Thomas did write the endorsement "Rosario Bucci" on the check. In addition, the daughter of the payee, who had died in July, 1972, testified that her father would have been 79 at the time of trial, that he had a very serious heart condition during the years preceding his death which prevented him from leaving his apartment more than two or three times a month, and that she had never known him to play dice at any time (Tr. 22-26).

#### **B. The Defendant's Case**

Thomas offered no evidence.

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<sup>\*</sup> "Tr." indicates references to the trial transcript.

## ARGUMENT

**The evidence was sufficient to support a finding that Thomas lacked authorization to endorse the check in the payee's name.**

The only contention presented by Thomas is that the Government failed to establish that he lacked authorization to endorse the check with the name of the payee. As the trial court recognized, lack of authorization was an essential element of both the forging and uttering counts of the indictment (Tr. 63).

Despite the death before trial of the payee, however, lack of authorization was established by overwhelming circumstantial evidence. *United States v. Brown*, 236 F.2d 403, 405-06 (2d Cir. 1956); *Ryno v. United States*, 232 F.2d 581 (9th Cir. 1956). The payee's daughter's testimony that her father was an elderly and seriously ill man who was rarely able to leave his apartment completely refutes Thomas's absurd contention that he won the check from the payee in a crap game. Moreover, "exculpatory statements, when shown to be false, are circumstantial evidence of guilty consciousness and have independent probative force." *United States v. Lacey*, 459 F.2d 86, 89 (2d Cir. 1972). The inference of guilt is particularly strong where the false statement concerns events at the very core of the offense. *United States v. Lacey, supra*, 459 F.2d at 90. Here, it was conclusively established through the unchallenged testimony of a handwriting expert that Thomas lied when he stated to the Secret Service agent that he did not sign the payee's name on the back of the check. This false exculpatory statement revealed Thomas's consciousness of the illegality of his actions and virtually compelled the inference that he signed the check in the payee's name without his authorization. Cf. *United States v. Parness*, Dkt. No. 74-1027 (2d Cir. June 27, 1974), slip op. at 4436-4441;



*United States v. Sheiner*, 410 F.2d 337, 340 (2d Cir.), *cert. denied*, 396 U.S. 825 (1969). Indeed, Thomas' statement that he received the check with the payee's signature already on it completely rebuts his present position that he was authorized by the payee to sign the name of the payee. At no time did Thomas ever state that he endorsed the check pursuant to the payee's authorization. Thomas, of course, had an absolute right and perhaps good reason not to testify or present any evidence. But "[w]hen a defendant has offered no case, it may be reasonable for the [trier of facts] to draw inferences from the prosecution's evidence which would be impermissible if the defendant had supplied a creditable exculpatory version." *United States v. Frank*, 494 F.2d 145 (2d Cir. 1974).

Furthermore, Thomas's present contention regarding authorization is incredible in light of the fact that Thomas claimed that he did not know the name of and could not describe the person from whom he allegedly won the check in a crap game. In view of the testimony of the handwriting expert and the payee's daughter and the implausibility of the defendant's explanation of his receipt of the check, the conclusion reached by Judge Bryan that Thomas lied about the entire incident (Tr. 65-67) was almost inescapable. Certainly "upon the evidence, giving full play to the right of the trier of facts to determine credibility, weigh the evidence, and draw justifiable inferences of fact, a reasonable mind might fairly conclude . . . beyond a reasonable doubt" that Thomas lacked authorization to endorse the check in the name of the payee. *United States v. Frank*, *supra*, 494 F.2d at 153. *United States v. Taylor*, 464 F.2d 240, 242-45 (2d Cir. 1972).

**CONCLUSION**

**The judgment of conviction should be affirmed.**

Respectfully submitted,

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**JEFFREY I. GLEKEL,**  
**JOHN D. GORDAN III,**  
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AFFIDAVIT OF MAILING

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK)

JEFFREY I. GLEKEL being duly sworn,  
deposes and says that he is employed in the office of  
the United States Attorney for the Southern District  
of New York.

That on the 7th day of August, 1974  
he served a copy of the within brief by placing the  
same in a properly postpaid franked envelope addressed:

WILLIAM EPSTEIN, ESQ  
Legal Aid Society  
Federal Defender Services Unit  
606 United States Courthouse  
Foley Square  
New York, New York 10007

And deponent further says that he sealed the said en-  
velope and placed the same in the mail drop for mailing  
at the United States Courthouse, Foley Square, Borough  
of Manhattan, City of New York.

Jeffrey Glekel

Sworn to before me this

4th day of Aug. 1974

Alma Hanson

ALMA HANSON  
NOTARY PUBLIC, State of New York  
No. 24-6763450 Qualified in Kings Co.  
Certificate filed in New York County  
Commission Expires March 30, 1976